



Office of the Attorney General
State of Texas

March 30, 1992

DAN MORALES
ATTORNEY GENERAL

Mr. Jeff Hankins
Program Division, Legal Services 110-1C
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR92-127

Dear Mr. Hankins:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 14866.

You have received a request for information relating to Texas Department of Insurance (the "department") policies regarding the prepaid funeral market. Specifically, the requestor seeks "any information regarding policy filings as related to policies used in the prepaid funeral market . . . [to include,] any citation in the Insurance and Administrative Codes, any directives from the department or NAIC [National Association of Insurance Commissioners] which outlines the departments interpretation of the cited regulations and any other relevant information." You have submitted to us for review agency guidelines which you claim are excepted from required public disclosure by section 3(a)(11) of the Open Records Act. As you address none of the other information requested, we assume it has been or will be made available to the requestor. See Open Records Decision No. 363 (1983).

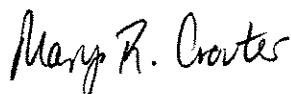
Section 3(a)(11) excepts "inter-agency or intra-agency memorandums or letters which would not be available by law to a party in litigation with the agency." It is well established that the purpose of section 3(a)(11) is to protect from public disclosure advice, opinion, and recommendation used in the decisional process within an agency or between agencies. This protection is intended to encourage open and frank discussion in the deliberative process. See, e.g., *Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.--San Antonio 1982, writ ref'd n.r.e.); Attorney General Opinion H-436 (1974); Open Records Decision Nos. 538 (1990) at 2; 470 (1987) at 6. Where a record is genuinely a preliminary draft of a document

that has been released or is intended for release in a final form, the draft necessarily represents the advice, opinion, and recommendation of the drafter as to the form and content of the final document. Open Records Decision No. 559 (1990). On the other hand, section 6(13) of the Open Records Act specifically makes public "statements of policy and interpretations which have been adopted by the agency." *But see* Open Records Decision Nos. 551 (1990) at 3; 460 (1987).

You assert that the department is currently in the process of drafting rules regarding the prepaid funeral market and that the "guidelines" submitted to us for review are "the substance" of these draft rules. You have advised us by telephone, however, that the "guidelines" pre-existed the department's decision to draft new rules and include "procedures now utilized internally by agency staff." Because the "guidelines" represent policies currently used by the staff and pre-existed the department's decision to draft rules, we cannot conclude that they are genuine preliminary drafts of new rules. Accordingly, we conclude that the requested documents may not be withheld from required public disclosure under section 3(a)(11) and must be released.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR92-127.

Yours very truly,



Mary R. Crouter
Assistant Attorney General
Opinion Committee

MRC/GK/nhb

Ref.: ID# 14866
ID# 15061

cc: Mr. Paul Lamb
Schrader, Lamb & Associates, Inc.
1700 One American Center
600 Congress Avenue
Austin, Texas 78701